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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,563	04/24/2002	Christian Baccelli	SPINE-400	6793
7590	10/31/2005			
Lerner David Littenberg Krumholz & Mentlik 600 South Avenue West Westfield, NJ 07090			EXAMINER PHILOGENE, PEDRO	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/031,563

Applicant(s)

BACCELLI ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152..

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/29/05 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Errico et al. (5,575,792) in view of Le Couedic et al. (6,368,320).

With respect to claims 1, 12, 25, 35, Errico et al disclose a multiaxial connection osteosynthesis system for the spine including a bone anchor member (300) having a head (304) a connecting member (250), a connector (400) having a first inwardly deformable housing (402) adapted to receive the head and with a second portion (422) the second portion having a U-shaped opening having an open end remote from the first inwardly deformable portion and a seat (421) the seat being integrally formed with the connector, as best seen in FIG.10, the open end adapted to receive the connecting

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member (250) along an axis, the first and second portions extending along the axis for clamping the connecting member in the second portion, the system including clamping means (235,330) for clamping the connecting member in the second housing.

Although Errico et al teach of clamping, it is noted that Errico et al did not teach of a clamping means wherein the connector is arranged so that, when the clamping means loads the connecting member in the second housing in the direction of the axis, the connecting member loads the seat to inwardly deform the first portion and immobilize the head therein; as claimed by applicant. However, in a similar art, Le Couedic et al., evidence the use of such a connector and clamping means, which presses down on the connecting member inwardly deform the first portion and locks the head of the bone anchor therein.

Therefore, given the teaching of Le Couedic et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connector and clamping means, as taught by Le Couedic et al., in the device of Errico et al to press down on the connecting member and locks the head of the bone anchor.

With respect to claims 2-11, 13-24, 26-34, the above combination of references teaches all the limitations as set forth.

### ***Response to Amendment***

Applicant's arguments filed 8/29/05 have been fully considered but they are not persuasive. Applicant stated that Errico et al disclose a locking ring 330 having a seat 333 that receives a rod displaced thereon. As the rod is pushed downward, the locking

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ring, a distinct and separate element from the connector 400, has a deformable end, which can be compressed. Applicant is right about one thing the locking ring has a seat 333. However, the connector having a deformable end also has a U-shaped opening and an integrally formed seat (421) therein. Applicant's attention is directed to FIG.10 where the seat is shown in dashed line.

### ***Conclusion***

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
October 25, 2005

  
PEDRO PHILOGENE  
PRIMARY EXAMINER